(3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO. 4831 OF 2004

PETITIONER

Mohan Lal Chouhan, S/o Shri Narsingh Chouhan, aged About 72 years, R/o 749, M P Housing Board Colony, Tilak Nagar, Gudhiyari,Raipur Tahsil & District Raipur [CG]

V E R S U S

RESPONDENTS

1. Vidyadhar Mishra, S/o Satya Dev Mishra,
2. Bhaskar Mishra,S/oVidyadhar Mishra, aged about 15 years,
3. Diwakar Mishra, S/oVidyadhar Mishra, aged about 13 years
4. Sudhakar Mishra, S/o Vidyadhar , aged about 11 Years,

Respondents No. 2 to 4 minors Through their natural guardian/ Father Vidyadhar Mishra, all R/o Station Road, Raipur (C.G)

P.R. No. 4836/04 Presented by Shri Alok Kr. Khare dated 28/12/04

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 4831/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	10.1.2005 Shri Manindra Shrivastava, counsel for the petitioner. Shri P.P. Sahu, counsel for the respondents. Heard both the counsel. As agreed by learned counsel for both the parties, this writ petition is being disposed of finally at the admission stage itself. By this writ petition under Article 227 of the Constitution of India, the petitioner has questioned the legality, propriety and correctness of the orders dated 19.10.2004 & 2.12.2004 (Annexures P-7 & P-8), whereby the petitioner's request made under Section 151 and Order 26 Rule 1 of the Code of Civil Procedure for examining the doctor namely, Dr. Sumeet Thakkar, on commission, who treated the petitioner at Nagpur, in order to prove that the petitioner was sick at the relevant time and was taking treatment at Nagpur, was rejected. By this order the ~~relevant~~ subordinate Court rejected the prayer made by the petitioner herein on the ground that there is no provision in the Code of Civil Procedure to get the witness examined on commission on the ground of unavoidable circumstances. Brief facts relevant for the disposal of this writ petition are that the father of respondent No.1 herein being a landlord of the petitioner herein filed a civil suit against the petitioner for eviction from house No.18/80 on the ground of default i.e. non-payment of	

GLPRJ—FS/350—12/2000—50,000.

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मामला क्रमांक W.P.4831/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

rent and sub-letting part of the premises in the year 1991. Summons of the suit were issued and the petitioner herein filed written statement, and after framing of issues the respondent absented himself. Therefore, the suit was proceeded ex-parte and after recording the evidence the learned trial Court decreed the suit in favour of the land lord on 27.11.2001. Thereafter, the landlord moved an application for execution of the decree and the notice of the said execution was issued, but that could not be served on the petitioner. In the meanwhile, the petitioner herein moved an application under Order 9 Rule 13 read with Section 151 of the C.P.C. on 8.5.2002 for setting aside the ex-parte decree. During the pendency of the application the respondents herein moved an application that the petitioner herein is destructing the house and other properties attached to the house and he is also cutting the trees and damaging the house. The petitioner herein also filed an application for stay of the execution proceedings and the same was accepted. As the proceedings for setting aside the ex-parte decree were not proceeding with expected speed the respondents herein constrained to approach this Court for appropriate direction and vide order dated 15.11.2003 looking to the facts and circumstances of the case, this Court directed the trial Court to dispose of the application under Order 9 Rule 13 of the C.P.C. for setting aside the ex-parte decree

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

within a period of three months. It seems that after this order, the trial Court started taking appropriate steps for disposal of that application within the stipulated time and in that process the petitioner herein initially requested for allowing time to produce the evidence, and the same was acceded by the trial Court. Initially, the petitioner herein requested the Court for issuance of summon to produce the doctor as he was not coming, that request was allowed and when the doctor did not turn up even after the service, then an application for examining him on commission was moved and the same was rejected.

Learned counsel for the respondents argued that the petitioner herein wants to delay the proceedings for one or the other reason, and for that purpose he moved an application for examination of the doctor on commission. Very fairly, he agreed that an order may be passed to the effect that the trial Court should appoint an Advocate practicing at Raipur as Commissioner to record the evidence of the doctor, and the petitioner herein to bear the expenses of the counsel for the respondents for going to Nagpur and that the Commissioner should examine the doctor within a period of 15 days from the date of appointment of the Commissioner to examine the witness.

Therefore, as agreed by learned counsel for both the parties, the writ petition is allowed and the trial Court is directed to appoint

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

an Advocate practicing at Raipur as Commissioner to record the evidence of Dr. Sumeet Thakkar, the doctor practicing at Nagpur. The trial Court should also pass an order that the petitioner herein will bear the expenses of the counsel for the respondents for going to Nagpur and other expenses borne by counsel for the respondents as fixed by the trial Court. It should also be made clear in the order that with the assistance of the petitioner, the Commissioner shall approach the Doctor in advance in order to ascertain his availability viz., date & time for recording his evidence, within a period of 15 days from the date of appointment, and then on the date fixed for recording the evidence of the doctor, the Commissioner, counsel for the petitioner, and counsel for the respondents all the three together will go to Nagpur for recording the evidence and submit the same to the trial Court.

In view of this order, M.(W.)P.No.5103/2004 stands disposed of.

Certified copy today itself.

Sd/-
L.C.BHADOO
Judge

Soma

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